

**IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL**

**Writ Petition No. 5166 (S/S) of 2001
(Old No. 11509/1998)**

Sri Balam Singh Gusain S/o late Sri Soban Singh Gosain
Presently posted at Tanda Range, Haldwani on the post of Van
Daroga (Forester), Tarai Kendriya Van Prabhag, Haldwani,
District- Nainital ----- Petitioner

Versus

1. State of Uttar Pradesh through Secretary, Department of
forest Conservation, U.P., Lucknow
2. Van Sanrakshak, Pashchimi Vratt, U.P. Nainital
----- Respondents

Hon'ble M.M. Ghildiyal, J.

Heard Sri V.B.S. Negi, learned counsel for the petitioner and
Sri N.P. Shah, learned Standing Counsel State of Uttarakhand for
the respondents.

By means of this writ petition, the petitioner has prayed for
the following reliefs:

1. Issue a writ, order or direction in the nature of certiorari
quashing the impugned order of termination dated 3.3.1998
passed by the respondent no.2.
2. Issue a writ, order or direction in the nature of mandamus
directing the respondents not to interfere in the functioning
and discharging the duties of the petitioner on the post of
Van Daroga and allow him to function on the aforesaid post.
3. Issue any other suitable writ, order or direction, which this
Hon'ble Court may deem fit and proper in the circumstances
of the case.
4. Award the cost of this petition to the petitioner.

The stand of the petitioner is that he was appointed as Van Daroga under the provisions of Rule 5 of the Dying-in-Harness Rules, 1974 in the year 1995. By order dated 03.03.1998, the petitioner was terminated from the services. Aggrieved by the order of termination, petitioner has preferred this writ petition.

Learned Standing Counsel has submitted that prior to passing the order impugned terminating the services of the petitioner, a show cause notice has also been issued to the petitioner on 08.12.1997, stating therein that since the petitioner has obtained his appointment on the basis of Madhyama Examination conducted by Hindi Sahitya Sammelan, Allahabad, but the said degree is not recognized for appointment in Government service as it is not equivalent to any examination conducted by U.P. High School and Intermediate Education Board, and thus, the petitioner's services are liable to be terminated.

In reply to the above averment made by the learned Standing Counsel, learned counsel for the petitioner has submitted that the petitioner has already given reply to the show cause notice on 07.01.1998, which is Annexure No. 3 to the writ petition, in which the petitioner has attached documents of different Universities and authorities, which clarify that the examinations conducted by Hindi Sahitya Sammelan, Allahabad are recognized by the said Universities and authorities. Learned counsel for the petitioner has further submitted that the qualification of Madhyama is equivalent to B.A. Degree whereas the essential qualification for the post of Van Daroga is only High School, and thus, the petitioner is fully qualified for the said post.

The petitioner has been terminated from the service of Van Daroga by order dated 03.03.1998, which was passed by respondent no. 2 under the provisions of U.P. Temporary Government Servant (Termination of Service) Rules, 1975.

This order has been assailed by the petitioner on the ground that the petitioner's services are not covered by the U.P. Temporary Government Servant (Termination of Service) Rules, 1975 as the petitioner was appointed under the Dying-in-Harness Rules, 1974, in pursuance of which, compassionate appointment is given to the incumbent on permanent basis and which is not a temporary appointment. Therefore, the provisions of U.P. Temporary Government Servant (Termination of Service) Rules, 1975 are not applicable to the petitioner and he cannot be terminated on this basis.

In support of his contention, learned counsel for the petitioner has placed reliance on a Division Bench judgment of the Hon'ble Allahabad High Court passed in Civil Misc. Writ Petition No. 39127 of 1994, **Ravi Karan Singh Vs. State of U.P. & Ors., (1999) 3 UPLBEC 2263**. The relevant portion of the order is quoted as under:-

"In our opinion, an appointment under the Dying-in-Harness Rules has to be treated as a permanent appointment otherwise if such appointment is treated to be a temporary appointment then it will follow that soon after the appointment the service can be terminated and this will nullify the very purpose of the Dying-in-Harness Rule because such appointment is intended to provide immediate relief to the family on the sudden death of the bread-earner. We, therefore, hold that the appointment under Dying-in-Harness Rule is a permanent appointment and not a temporary appointment and hence the provisions of U.P. Temporary Government Servant (Termination of Services) Rule, 1975 will not apply to such appointments."

Learned counsel for the petitioner has alleged that considering all these circumstances, petitioner should not have been terminated.

Considering the circumstances aforesaid, the order dated 03.03.1998 is liable to be quashed and the same is hereby quashed. However, it is open for the respondents to take necessary action after adopting due procedure in accordance with law.

With this observation, the writ petition is finally disposed of. All the pending applications stand disposed of. No order as to costs.

(M.M. Ghildiyal, J.)

22.08.2007
VKS